IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

REVIEW PETITION NO.45 OF 2007
IN
WRIT PETITION NO.2677 OF 2003

The State of Maharashtra & Anr. ...Petitioners.
Vs.
Abid Kurban Husain Daruwala & Anr. ...Respondents.
....
Mr. S.R. Nargolkar,AGP for the Petitioners.
Mr. Rajesh Behere for Respondent No.1.
Mr.Sudhir Prabhu for Respondent No.2.
.....

CORAM : SMT.R. P. DESAI AND
DR.D.Y.CHANDRACHUD, JJ.
April 25, 2007.

ORAL ORDER (PER DR. D.Y. CHANDRACHUD, J.):

The State of Maharashtra and the Arbitrator for Town Planning Scheme, Panvel-I have instituted the Review Petition which forms the subject matter of these proceedings. The First Respondent to the Review Petition is the original Petitioner while the Second Respondent is the Panvel Municipal Council, the Second Respondent to the Writ Petition. A review has been sought of the order dated 13th June 2003 passed by a Division Bench of this Court.

2. The First Respondent instituted a petition under Article 226 of the Constitution seeking the issuance of a writ to the State of Maharashtra, the Panvel Municipal Council and the Arbitrator of the Town Planning Scheme to define the share of the Petitioner and to hand over possession, after effecting a division of Final Plots 303 and 304, situated within the Municipal area. The contention of the original Petitioner was that he was the owner of land comprising Survey No.369, Hissa No.4 admeasuring 425 sq.mtrs. According to the original Petitioner, he was allotted Final Plot No.301 in lieu of his original plot in the Town Planning Scheme which was sanctioned in 1964. There were allegedly certain inconsistencies in the finalised scheme which were drawn to the notice of the Arbitrator. It was averred that the Town Planning Scheme was revised as a result of which the Petitioner was allotted Plots 303 and 304 jointly with certain other persons in the final scheme, for residential purpose. A notice dated 9th February 2000 was accordingly stated to have been issued. The contention of the original Petitioner was that the authorities had failed to define the share of the respective parties and the areas allotted to them as required by Section 72(3)(iii) of the Maharashtra Regional and

Town Planning Act, 1966.

3. On 4th June 2003, the hearing of the Writ Petition was adjourned till 12th June 2003. The petition was disposed of by an order dated 13th June 2003. The order of the Court records the submission of the Municipal Council that the Assistant Director of Town Planning is empowered to act as Arbitrator under the provisions of the Act and appropriate directions may be issued to him for demarcating the share of the parties. Accordingly, while making the rule absolute, the Court issued the following directions:

> "Accordingly, we direct the Assistant Director, Town Planning, Alibag to demarcate the shares of the allottees in respect of the final plot nOs.303 and 304, and put the parties in possession of their respective plots, after giving notice to all the concerned persons/co-sharers as shown in the scheme, within a period of six months."

4. The State of Maharashtra and the Arbitrator, Town Planning Scheme, Panvel-I have averred in the Review Petition that the averments made by the original Petitioner were "blatantly false and incorrect" and that the original Petitioner had suppressed material facts from the Court. According to the State, the original Petitioner was allotted Plot 82/B by consent and with

his choice and he had agreed to dispose of the allotted plot by entering into an agreement of sale in favour of a developer by the name of Happy Home Developers. In the circumstances, it has been submitted that the original Petitioner is not entitled to any equitable relief. Moreover, it has been urged that the directions issued by the Court to the Assistant Director of Town Planning to demarcate shares of the allottees in respect of Final Plots 303 and 304 and put the parties into possession of their respective plots could not have been granted in view of the provisions of Section 88 of the Act.

5. Section 88 provides as follows:

> "88. On and after the day of which a final scheme comes into force -
>
> (a) all lands required by the Planning Authority shall, unless it is otherwise determined in such scheme, vest absolutely in the Planning Authority, free from all encumbrances;
>
> (b) all rights in the original plots which have been reconstituted, shall determine and the reconstituted plots shall become subject to the rights settled by the Arbitrator;
>
> (c) the Planning Authority shall hand over possession of the final plots to the owners to whom they are allotted in the final scheme."

Having regard to the provisions of Section 88(c), it has been urged that it is for the Planning Authority to hand over possession of the final plots to owners to whom they are allotted in the final scheme.

6. An affidavit in reply has been filed by the original Petitioner in which it has been stated that while he was allotted Plot 82-B earlier, no possession was actually given and his agreement of sale dated 25th February 1987 with the Developer was conditional and did not confer any right, title or interest on the developer. According to the original Petitioner, he was allotted final Plots 303 and 304 after the Town Planning Scheme was varied.

7. Having heard Counsel for the contesting parties, we are of the view that the directions issued by this Court on 13th June 2003 need to be recalled. When the Court passed its order dated 13th June 2003, finally disposing of the petition, neither had the State nor the Municipal Council filed its affidavit in reply. A submission was made before the Court by Counsel for the Municipal Council that the Assistant Director of Town Planning was presently empowered to act as an Arbitrator under the Maharashtra Regional and Town Planning Act, 1966, and

appropriate directions may be issued to him for demarcating the share of the parties. The order of this Court directs the Assistant Director to demarcate the shares and to put the parties in possession of their respective plots after giving notices to the concerned persons/co-sharers within a period of six months. The direction issued to the Assistant Director of Town Planning to put the parties in possession of their respective plots is contrary to Section 88(c) of the Act under which it is the duty of the Planning Authority to hand over possession of the Final Plots to the owners.

8. Having regard to the totality of the facts and circumstances, we are of the view that it would be appropriate and proper if the order of the Court dated 13th June 2003 is recalled and an opportunity is granted to the Respondents to the Writ Petition to file their affidavit in reply to deal with the averments contained in the petition. Writ Petition 2677 of 2003 shall stand restored to the file and shall be placed by the Registry before the appropriate Bench in accordance with the assignment of work. The Respondents to the Writ Petition, namely, the State of Maharashtra, Panvel Municipal Council and the Arbitrator, Town Planning Scheme, Panvel-I are directed to file their affidavits in

reply on or before 4th June 2007 with an advance copy to the Advocate for the original Petitioner. The original Petitioner would be at liberty to file a rejoinder, if any, on or before 11th June 2007. The Writ Petition shall be listed before the appropriate Bench by the Registry on 12th June 2007 for directions. The Review Petition is allowed and the order dated 13th June 2003 is recalled.

(SMT. R.P. DESAI, J.)

(DR. D.Y. CHANDRACHUD, J.)